

1 Hernandez - Cross/Harrison

2 THE COURT: All right. Yes, he has on a tank
3 top. Others have shirts. Another one has a
4 hooded sweatshirt. Another one has an outer
5 jacket with a fur collar. There are two of them
6 with hooded shirts and another one has a shirt, I
7 think. But it speaks for itself.

8 Go ahead.

9 Was his lawyer present -- this was the photo
10 array -- I am sorry.

11 THE WITNESS: No.

12 THE COURT: Go ahead. Strike that.

13 Q Now, this photo array, Mr. Collins' photo array,
14 position No. 2 is the only man who has on a sleeveless
15 shirt, is that correct?

16 A That's correct, sir.

17 Q Now, the name of the man who saw this first photo
18 array, refresh my recollection?

19 THE COURT: Santos.

20 Q Mr. Santos, okay. Mr. Santos was then taken to
21 view a lineup, is that correct?

22 A At a later date, yes.

23 Q How much later? What was the time differential
24 just in days when you say a later date?

25 A You mean from the time he viewed the photo array?

1 Hernandez - Cross/Harrison

2 Q Right.

3 THE COURT: Until the time he saw the
4 lineup.

5 A February 10 he views the photo array. March 9 he
6 views the lineup.

7 THE COURT: 27 days, approximately.

8 Q And he did not view the lineup on February 18, did
9 he?

10 A No, he didn't.

11 Q If I might see the lineup photo, please.

12 Now, March 10 Mr. Santos saw the lineup,
13 yes? He saw a lineup?

14 A March 9.

15 Q March 9, my error. Right?

16 A Yes.

17 Q Upon viewing the lineup how did he respond?

18 A How --

19 Q In other words, what did he say?

20 A How did Mr. Santos respond?

21 Q Excuse me?

22 A How did Mr. Santos respond?

23 Q That is correct.

24 A If I may read what he said.

25 THE COURT: Yes.

1 Hernandez - Cross/Harrison

2 Q Please.

3 THE COURT: If it refreshes your
4 recollection.

5 THE WITNESS: Yes, it will. Thank you, sir.

6 A Mr. Angel Santos identified No. 2 as being the
7 person who he saw, and this is what he stated, "the guy,
8 No. 2, he's the one I saw run by the furniture store."

9 Q Now, there came a time that Mr. Diaz also viewed a
10 photo array, is that correct?

11 A Yes, sir.

12 Q And do you recall the date Mr. Diaz reviewed the
13 photo array?

14 A Oh, Mr. Diaz viewed the photo array on February
15 22.

16 Q And Mr. Diaz, did he view the same photo array as
17 is in exhibit, I believe, E?

18 A Yes, sir.

19 Q What did he say upon viewing the photo array? How
20 did he respond?

21 A He looked at the photo array. He identified photo
22 No. 2, that being Mr. Jabbar Collins. I would have to look
23 at my notes again to say exactly what he said.

24 THE COURT: Sure.

25 Q Please do.

1 Hernandez - Cross/Harrison

2 THE COURT: Of the photo array?

3 THE WITNESS: Of the photo array, sure.

4 A Mr. Adrian Diaz stated when he identified photo
5 No. 2 as a person he saw leaving the building, that's it.
6 That's the person that he saw leaving the building in
7 reference to 126 Graham Avenue.

8 Q And on March 9, was that the date of that lineup?

9 A Yes, sir.

10 Q And he viewed the same lineup as the one --

11 THE COURT: Santos.

12 Q -- Mr. Santos viewed, is that correct?

13 A That's correct, sir.

14 Q Which of the two gentlemen viewed the lineup
15 first, if you recall?

16 A Mr. Adrian Diaz viewed the lineup first and
17 Mr. Santos viewed it second.

18 Q Okay. Mr. Diaz, now, when he viewed the lineup,
19 what was his response --

20 A I am sorry, sir. Whose response?

21 Q How did he respond?

22 A Whose response now? Mr. Diaz?

23 THE COURT: - Diaz.

24 Q Yes.

25 A Mr. Diaz stated, "No. 2," and again I will have to

1 Hernandez - Cross/Harrison

2 look at --

3 THE COURT: Go ahead.

4 Q Please.

5 THE COURT: If it refreshes your
6 recollection.

7 THE WITNESS: Sure.

8 A Mr. Adrian Diaz, he identifies No. 2 and he says,
9 "he's the guy who came out of the building holding a gun
10 and he put in his back. Then he ran up Boerum, made a
11 right, then another right into a lot."

12 Q As to the second lineup, the one on March 9, was
13 there an attorney present?

14 A No, sir.

15 Q The one on March 18 -- I mean, February, if I may,
16 18, there was an attorney, right?

17 A I would have to check my notes. There may have
18 been an attorney present at that time.

19 Q I would ask you --

20 THE COURT: Check your notes.

21 MR. VECCHIONE: Judge, I have an objection.
22 This was a lineup where no one picked out the
23 defendant. I don't know whether there is
24 relevance to this hearing.

25 THE COURT: Sustained. You are talking about

1 Hernandez - Cross/Harrison

2 the March 9 one. The other lineups were given to
3 you, as I understand it, possibly under the Brady
4 theory.

5 MR. VECCHIONE: Yes, Judge.

6 THE COURT: That he was shown to certain
7 people who failed to make an identification. That
8 is not before me. We are here now to talk about
9 the March 9 lineup.

10 Was there any lawyer present at the March 9
11 lineup?

12 THE WITNESS: No, sir.

13 THE COURT: When either witness viewed?

14 THE WITNESS: No, sir.

15 THE COURT: That answers that question. No
16 lawyer was present.

17 MR. HARRISON: Yes, your Honor. May I have
18 one minute.

19 THE COURT: Go ahead.

20 (Pause)

21 MR. HARRISON: Your Honor, the defense has no
22 further questions.

23 THE COURT: Anything else, Mr. Vecchione?

24 MR. VECCHIONE: No, your Honor.

25 Judge, that is the People's case for purposes

1 Proceedings

2 of the hearing.

3 (Witness excused.)

4 THE COURT: Anything you want to put in,
5 Mr. Harrison?

6 MR. HARRISON: The defense rests as to the
7 hearing, and we will wait for the Court's
8 permission to read the minutes.

9 THE COURT: And rely on the record?

10 MR. HARRISON: I rely on the record, and I
11 would like to make a closing argument.

12 THE COURT: Go ahead.

13 MR. HARRISON: The defense will admit to the
14 following and only in reference to the lineups in
15 question which were the ones on March 9.

16 THE COURT: Correct.

17 MR. HARRISON: Two photo arrays were shown.
18 The photo arrays have my client, Mr. Collins, with
19 a sleeveless shirt on, and the defense would argue
20 a tank top, but at least a sleeveless shirt. He
21 was the only one with a sleeveless shirt on.

22 The defendant would submit to the Court that
23 that focused the attention of the witnesses to one
24 individual photograph. Subsequent to seeing that
25 photograph, they were then brought to the

Proceedings

1
2 lineups. At the lineups the man in the sleeveless
3 shirt was sitting there, thereby creating a
4 suggestive environment in which the wrong person
5 was chosen. The defense would submit to the Court
6 that the lineup should be suppressed and if the
7 suppression is denied, in the alternative the
8 hearing be bifurcated as to bringing in the
9 witnesses.

10 The defense would also submit to the Court
11 that if there was an attorney at the lineups on
12 February 18, then at the subsequent lineup on
13 March 9 that right to an attorney attached.

14 THE COURT: Do you want to be heard, Mr.
15 Vecchione?

16 MR. VECCHIONE: Judge, first of all, if my
17 recollection is correct, the defendant was not
18 sitting in the lineup with a tank top on. So
19 Mr. Harrison's statement about the man in the
20 sleeveless shirt sitting in the lineup --

21 MR. HARRISON: I meant --

22 MR. VECCHIONE: -- is incorrect.

23 THE COURT: In the photo array he is talking
24 about.

25 MR. VECCHIONE: Judge, he said in the photo

Proceedings

array with the tank top, and the implication for the record is when he sat in the lineup, he was the only person in the lineup with a tank top on. That is not correct.

THE COURT: I know it is not correct. I saw the pictures.

MR. VECCHIONE: I know of no case right to counsel attaches because he afforded himself the opportunity to have the lawyer at one lineup and didn't afford himself to have the lawyer at the second lineup. Mr. Harrison is mistaken as to whatever law he thinks exists at this point.

THE COURT: I think there was some testimony that these witnesses, Diaz and Santos, looked at several photo arrays.

MR. VECCHIONE: That's correct, Judge.

THE COURT: Which Mr. Harrison brought before me and they saw and the police officer mentioned to me that there were different people in all those lineups, in all those photo arrays, and Mr. Collins was not in any one of them other than the one we designated as People's Exhibit 1.

MR. VECCHIONE: That's correct, Judge.

THE COURT: So I don't see where there is any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings

MR. HARRISON: I am going to come here to your part, your Honor. The way the buildings are these days, I will go to 120 and never get out of there.

THE COURT: Fine.

MR. HARRISON: Also, the Antommarchi ruling, before I discuss it with my client, I just wanted to know how the Court approaches it.

THE COURT: I have a form I give to the defendant. You and the defendant sign it.

MR. HARRISON: I understand that.

THE COURT: Okay.

MR. HARRISON: But I have not -- hypothetical.

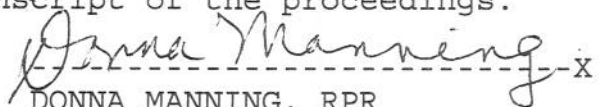
THE COURT: Take a form with you and you can discuss it with your client at your leisure, not here because I have a jury deliberating now.

MR. HARRISON: Understood.

(Visit allowed between defendant and mother.)

* * * * *

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

-X
DONNA MANNING, RPR
OFFICIAL COURT REPORTER
SUPREME COURT-KINGS COUNTY

TRANSCRIPT SERIAL# _____
BOX # _____
SYS. ID#: 1578

54

pp 54-152

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS - CRIMINAL TERM - PART: 39

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

JABBAR COLLINS,

Defendant.

-----X
Indict. No. 2884/94
8907/94

360 Adams Street
Brooklyn, New York
March 6, 1995

B E F O R E:

HONORABLE FRANCIS X. EGITTO, Justice

A P P E A R A N C E S:

OFFICE OF CHARLES J. HYNES
DISTRICT ATTORNEY, KINGS COUNTY
Attorney for the People

BY: MICHAEL VECCHIONE, ESQ.,

-and-

STACEY FRASCOGNA, ESQ.,

-and-

CHARLES POSNER, ESQ.,

Assistant District Attorneys

MICHAEL HARRISON, ESQ.,
Attorney for the Defendant

NIKOLETA ELEFTERIOU
Official Court Reporter

1 Proceedings

2 THE CLERK: Case on trial continues.

3 MR. HARRISON: Michael Harrison, 401 Broadway,
4 for Jabbar Collins. Good morning, Your Honor.

5 MR. VECCHIONE: Michael Vecchione for the
6 office of the District Attorney.

7 THE COURT: Shortly before the court reporter
8 arrived -- I will take the others in a moment --
9 shortly before the court reporter arrived, we had a
10 discussion as to what what illegal or immoral acts
11 the D.A. would question the defendant on if he took
12 the witness stand and I have representations from
13 the D.A., Mr. Vecchione, particularly that if the
14 defendant took the witness stand, he would not
15 question him on his Family Court matter nor his
16 Y.O. matter on cross examination. Correct?

17 MR. VECCHIONE: That's correct, Judge, the
18 Family Court matter was dismissed and the Y.O.
19 adjudication replaces the conviction in any event,
20 so there is nothing I could ask.

21 THE COURT: So you don't plan on cross
22 examining on any illegal or immoral acts. Okay?

23 MR. HARRISON: Yes, Your Honor.

24 MR. VECCHIONE: That's right.

25 MR. HARRISON: Also, the defense is going to

1 Proceedings

2 withdraw the alibi notice for Margaret Collins and
3 we request that she be allowed to sit with my
4 client's mother.

5 THE COURT: Since she is not going to be a
6 witness in the case, she has a perfect right, like
7 anyone else, to sit in the courtroom.

8 MR. HARRISON: Yes, Your Honor.

9 THE COURT: But you understand that she
10 understands that sitting in the courtroom she can
11 not testify.

12 MR. HARRISON: That's understood, Your Honor.
13 She is in the courtroom now as is my client. We
14 all understand.

15 THE COURT: Mr. Collins?

16 THE CLERK: Antomarchi is executed.

17 THE COURT: (Continuing) Mr. Collins, did your
18 lawyer explain to you that while we are picking a
19 jury, some juror may want to approach the bench and
20 tell me why he wants to be excused or why she wants
21 to be excused, and you just signed a paper saying
22 even though you have a right to come up and listen,
23 you are willing to let your lawyer come up and
24 listen and then come back and explain to you. You
25 don't feel that you want to exercise that right to

1 Proceedings

2 come up to the bench, is that right?

3 THE DEFENDANT: Yes, it is. He explained it
4 to me.

5 THE COURT: And I have the statement signed by
6 the defendant and his counsel.

7 Anything else you want to discuss before I
8 bring in the panel?

9 MR. HARRISON: No, Your Honor. Just, at this
10 juncture, the only witness the defense intends to
11 call is a Louisa Lopez. I had a Gerard Crippen as
12 an investigator. I don't foresee calling him, but
13 you never know.

14 THE COURT: Have you got a statement?

15 MR. HARRISON: No, but I will give the DA's
16 number should he have anything, to turn it over to
17 you.

18 MR. VECCHIONE: From Lopez.

19 MR. HARRISON: No, I have no statement from
20 Lopez. My investigator, Crippen.

21 THE COURT: Have you got notes from Crippen?

22 MR. HARRISON: No. I don't have notes
23 personally.

24 MR. VECCHIONE: Well, Judge --

25 THE COURT: Wait, that's not an answer. Did

1 Proceedings

2 he make notes of his conversation with the
3 witness?

4 MR. HARRISON: I have to call and
5 double-check. I have had nothing turned over to
6 me.

7 THE COURT: Because that's Rosario material.

8 MR. HARRISON: I understand that, Your Honor.

9 THE COURT: Just so you know. And all Rosario
10 material from the People has been turned over?

11 MR. VECCHIONE: No, Rosario, no, that's not
12 correct. Discovery Rosario material will be turned
13 over once we select the jury.

14 THE COURT: So let's get it done sometime
15 today.

16 MR. VECCHIONE: It's already done and
17 read -- it's already copied and sitting in my
18 office.

19 THE COURT: All right, let's get the jury in.

20 (Whereupon, the panel of prospective jurors
21 entered the courtroom.)

22 THE COURT: Good morning.

23 Will you all please rise?

24 THE CLERK: Jurors, kindly stand and raise
25 your right hand. Do you and each of you solemnly

Jury Selection

swear or affirm that you will truly answer all questions asked of you relating to your qualifications to serve as a juror in this action?

(Jurors respond in the affirmative.)

THE CLERK: Please be seated.

Jurors, when you hear your name called, kindly answer "here" to the calling of your name. Take all your belongings and take the seat that's assigned to you.

Take seat number one, Phyllis Kessler.

THE COURT: Please answer.

THE PROSPECTIVE JUROR: Here.

THE CLERK: Take seat number two, Berlent Thompson.

Take seat number three, Anne Curatolo.

Take seat number four, Marlene Gooding.

Take seat number five, David Morrero.

Take seat number six, Arthur Morris.

Take seat number seven, John Cane.

Take seat number eight, Patrick Monaghan.

Take seat number nine, Cybil Hammil.

Take seat number ten, Gene Claude Edouard.

Take seat eleven, Evelyn Glaubach.

1 Jury Selection

2 Take seat twelve, Robert Gibaldi.

3 Take seat thirteen, Luz Williams.

4 Take seat fourteen, Delta McCalla.

5 THE COURT: Okay.

6 Now, ladies and gentlemen, I intend to make a
7 brief statement to all of you and to then ask
8 certain questions. I want you to know I am
9 directing my remarks to every juror in the room,
10 those in the jury box and those of you sitting in
11 the audience. Please pay close attention to all
12 the questions that I ask and particularly the
13 general questions which I direct to the body as a
14 whole. The reason for this is that if you, who are
15 outside the rail, are called to sit in the jury
16 box, you will be asked if your answers to those
17 general questions would be the same. The purpose
18 of these inquiries is to obtain 12 citizens of
19 Brooklyn to serve as jurors at this trial. The
20 case involves the trial of criminal charges brought
21 by the People of the State of New York against the
22 defendant, Mr. Jabbar Collins. The charges against
23 the defendant are contained in an indictment which
24 allege that the defendant committed certain
25 criminal acts. The indictment charges the

Jury Selection

defendant with what we call "felony murder"; that someone was killed during the course of a robbery. Those are the allegations. They are no proof whatsoever. Now, if any of you disagree with me, please just raise your hands. See, we have a situation here where we have a white man and a black man. Now, would you all agree with me that everybody in this country is entitled to a fair trial? Anybody disagree with that? Anybody disagree with me that it would be improper and unamerican to treat the case, because of the person's color, race or religion, anybody disagree with that?

Mr. Jabbar Collins is entitled to a fair trial. And before he can be convicted, the People must prove beyond a reasonable doubt that this defendant committed the acts charged against him. It would be totally and completely unamerican for someone to say: Well, a white man was killed. Conversely, it would be unamerican to convict this defendant if Mr. Vecchione does not prove his guilt beyond a reasonable doubt merely because of race or color. Does anybody disagree with that? And I tell you members of the jury now, whoever is picked

Jury Selection

on this jury, if that issue comes up in the jury room, that is if somebody talks about race or color in the jury room and not the facts of the case, I would like a note telling me that that's going on. Is that clear? Anybody have any objection to that? Because I want you all to feel, and please, in the back of your minds, put a cloak; as a matter of fact, Mr. Collins is already draped with the mantle of the presumption of innocence. I want you to put a complete cover over the defendant. I want you not to consider the color -- the color, the race, the religion of the victim. I want you to say: There is a defendant and there is a victim. You are all under oath. Will you all promise that, that you will consider this case based soley on the fact that there is a defendant who is presumed to be innocent and there is a victim and they are not to consider their race or their color. If any of you feel differently, please, I will excuse you, but if you feel any different, tell me now. I think you are being unfair to yourself if you feel that way and you don't tell us. You don't have to tell me exactly that's it, but I will excuse you, because between you and me, you are being unfair to

1 Jury Selection

2 yourself if you are going to judge this case based
3 on who the people are that are involved. All
4 right?

5 Can I now start with the legal part of the
6 case? Okay?

7 Now, the indictment, I want you to know that
8 the indictment is merely a charge. It is merely
9 the way by which the People of the State of New
10 York bring to court individuals it claims have
11 violated the law. And it is not any evidence
12 whatsoever of the guilt of the defendant. I want
13 you to know right now, the mere fact that someone
14 said Mr. Collins did something is no -- there is no
15 proof. The proof has to come from the witness on
16 that chair. Now, Mr. Collins is presumed to be not
17 guilty. And this presumption of innocence
18 continues throughout the trial, unless a jury,
19 having considered all of the evidence, finds that
20 the defendant is guilty beyond a reasonable doubt
21 of the charges made against him. The burden of
22 such proof is on the District Attorney and that
23 burden never shifts. There is no burden on the
24 defendant. He and his attorney may sit during this
25 entire trial and do nothing. At the conclusion of

1 Jury Selection

2 the trial, it will be my province as the Judge to
3 instruct you as to the law which is applicable to
4 this case and the jury must follow my instructions
5 on the law. The jury on the other hand is the
6 exclusive judge of the facts and the jury alone
7 determines whether the People have proven the
8 charges with respect to this defendant beyond a
9 reasonable doubt. In other words, you must take
10 the law from me and I must take the facts from you
11 as you find those facts to be. As jurors, your
12 verdict must be unanimous. You will be called upon
13 to deliberate. Can you promise the defendant and
14 the People that you are willing to participate in
15 deliberations by expressing your views based on the
16 evidence in this case, keeping an open mind and
17 listening to the views of your fellow jurors?

18 I don't hear you.

19 (Jurors respond in the affirmative.)

20 THE COURT: Now, you are going to see
21 witnesses come to the witness box. They are going
22 to testify. That's evidence, but that you do every
23 day of your life; on the job, at home, with your
24 kids, with your family, when people talk to you.
25 In your own minds, whether you think you know it or

Jury Selection

not, you are sort of deciding whether they are telling you the truth, whether they are giving you a line, whether they are exaggerating. You do that every day. You don't deliberate every day. And the reason I say that is because we as humans don't like to listen, we like to talk. And in many many cases, and I am sure you have experienced, you are talking and that person is not even hearing what you are saying. He just wants you to keep quiet so he can say what he has to say. Maybe a good example of that is someone stops you and asks you: Hey, Joe, how are you doing? I don't know, my wife has been sick, and before you can finish, he says, that's good and walks on. He didn't hear a word you said. He was just waiting for you to stop talking so he can go on his way. You can't do that in a jury room. In a jury room, you must discuss the facts. Your fellow jurors must listen to what you say the facts are. They will then tell you what the facts are and you must listen to the other jurors and then hopefully arrive at a verdict. Can you all do that?

Now, the reason I say that is because -- and it always happens in some case down the line,

1 Jury Selection

2 and you change your remarks to the jury
3 accordingly -- I had one juror that went into the
4 jury room and if you haven't been here before, you
5 wouldn't know it, there is a nice ledge and a
6 window which can't be opened. And this fellow
7 walked in, doesn't matter whether he said guilty or
8 not guilty, he had made up his mind. He heard one
9 witness and he sat back and enjoyed the case and he
10 said: Hey, look man, this guy is so and so. Let's
11 use the word "not guilty." He says: Not guilty.
12 I don't care. When the rest of you decide to agree
13 with me, we go out and tell the judge, and that
14 went on for two days until I got wind of it. But
15 you see, I am not telling you if you are in a
16 minority to change your vote just because there is
17 even eleven against you. Unless you are convinced
18 by their arguments that your position is wrong, you
19 do not under any circumstances change your vote.
20 And unless some of the arguments that they give you
21 tells you that your view of the evidence was not
22 right, don't change your opinion, but be willing to
23 change if you are convinced that your position is
24 wrong. Now, there is nothing wrong with being
25 stubborn, there is nothing wrong with being too

Jury Selection

1 Jury Selection
2 proud, too convinced that maybe you viewed
3 something wrong. There is nothing wrong with that,
4 but you can't sit on the jury. If any of you feel
5 that you are that type of person, that once you
6 decide something, even if God came down from his
7 heaven you wouldn't change your mind, please, let
8 me know now. There is nothing wrong with it, but
9 you can't sit on the jury. Will all of you
10 promise, both sides, that if you are
11 convinced -- you will vote according with your own
12 conscience, but if you are convinced that you are
13 wrong, you will change your position, whichever way
14 it goes? I don't care which way. Will you all do
15 that please?

16 (Prospective jurors respond in the
17 affirmative.)

18 THE COURT: Good.

19 The lawyers have a right to challenge
20 jurors. If that should be done, you are not to
21 consider it a reflection on your integrity or even
22 your capacity to serve. Lawyers have a tendency of
23 deciding from the little we learn about your
24 background who they would like on this particular
25 case. The best example might be if, let's assume

1 Jury Selection

2 you were the victim of a robbery or a mugging. The
3 defense lawyer says: Gee, I'd rather not have you
4 on this case because you may be thinking of what
5 happened to you when you are deciding the case
6 against Mr. Collins. You see what I am saying?

7 Now, this is a case which happened back in
8 1994, in February, at 126 Graham Avenue in the
9 lobby of that building in Brooklyn. And the
10 victim's name is Abraham Pollack. Anybody know
11 about this case? Anybody live in that particular
12 area? What's the cross streets?

13 MR. VECCHIONE: Boerum.

14 THE COURT: Graham and Boerum. And you never
15 heard about an alleged robbery or murder that took
16 place in the area?

17 PROSPECTIVE JUROR NO. TWO: Yes, I did.

18 THE COURT: Do you know anything about it?

19 PROSPECTIVE JUROR NO. TWO: No, I don't. I
20 heard about it but I --

21 THE COURT: Would that affect you in any way?
22 In other words, can you listen to the witnesses
23 here, without thinking of what you heard about the
24 case, and just judge the case based on what they
25 tell you here?

1 Jury Selection

2 PROSPECTIVE JUROR NO. TWO: Yes, I can.

3 THE COURT: How about the rest of you? You
4 are in the area. Can you listen and judge the case
5 solely on the evidence here, even if it brings back
6 some recollection of what happened there? Okay?
7 Judge only the case here?

8 Now, any of you have any pressing or family
9 business obligations which will keep you from
10 devoting your attention in this case? If any of
11 you have any health problems, and I will tell you
12 what my schedule is, we usually start the trial at
13 10 o'clock, go to lunch between one and two, and we
14 work in the afternoon until about five or as soon
15 as whatever witness is on the stand, we will try to
16 finish with that witness. Anybody have any problem
17 sitting for that period of time? Anybody have any
18 hearing problem?

19 PROSPECTIVE JUROR NO. 11: Judge, I would like
20 to know if we would be allowed to leave earlier on
21 Friday. I observe the Sabbath.

22 THE COURT: I don't interfere with anybody's
23 observances and I suppose at this time of the year,
24 3 o'clock or so would probably be a good time.

25 PROSPECTIVE JUROR NO. 11: Fine.

1 Jury Selection

2 THE COURT: Oh, yeah. I mean, that goes
3 without saying. If anyone has any
4 particular -- that goes when we have a -- if you
5 are picked on the jury and we have lunch in or
6 lunch out, if anyone has any dietary problems, we
7 will take care of those. There is no problem with
8 that either. Okay?

9 Now, I am going to ask certain questions now.
10 (Jury selection not recorded.)

11 * * *

12 (Whereupon, the following transpired outside
13 the presence and hearing of the prospective
14 jurors.)

15 THE CLERK: Counselors, this is an A Felony.
16 There are twenty challenges per side. As to the
17 entire panel, any challenges for cause, People?

18 THE COURT: How about number two?

19 MR. VECCHIONE: Yes, I that's what I was going
20 to ask.

21 THE COURT: That's the lady that said no
22 matter what, if she didn't -- if there was not a
23 witness who saw the actual shooting, I think those
24 were her words, she would not vote.

25 MR. HARRISON: No objection.

1 Jury Selection

2 THE CLERK: Any others counselors, for cause?

3 THE COURT: The whole panel.

4 MR. VECCHIONE: The whole panel?

5 THE CLERK: Yes.

6 MR. VECCHIONE: Number 14, Ms. McCalla. She
7 is the woman who indicated her son was convicted
8 many times. I understand she didn't articulate on
9 the record she couldn't be fair. In fact, said the
10 opposite. I think having a son who had been
11 convicted and said many times sat and watched
12 trials, I can't imagine she can separate.

13 THE COURT: She announced to us that she
14 could. That's denied. I can only judge what they
15 tell me.

16 Anything else?

17 MR. VECCHIONE: No.

18 THE CLERK: Defense, cause?

19 MR. HARRISON: No.

20 THE CLERK: Peremptorily, first twelve, that's
21 up to and including number thirteen, Miss
22 Williams.

23 Peremptorily, People?

24 MR. VECCHIONE: Number four, Gooding.

25 THE CLERK: What?

1 Jury Selection

2 MR. VECCHIONE: What did you say, up to what
3 number?

4 THE CLERK: Up to and including Luz Williams.

5 MR. VECCHIONE: Can you give me one second,
6 Judge?

7 THE COURT: Sure.

8 (Short pause in the proceedings.)

9 MR. VECCHIONE: Number thirteen, Miss
10 Williams.

11 THE CLERK: Any others?

12 MR. VECCHIONE: No.

13 THE CLERK: Peremptorily, defense?

14 MR. HARRISON: Number one and three are
15 acceptable to the defense. I am going to challenge
16 number five.

17 THE CLERK: Mr. Morrero.

18 MR. HARRISON: I am going to challenge number
19 six.

20 THE CLERK: Martino.

21 MR. HARRISON: I am going to challenge seven.

22 THE CLERK: Cane.

23 MR. HARRISON: Eight is acceptable, acceptable
24 to us. I am going to challenge ten, eleven and
25 twelve.

1 Jury Selection

2 THE CLERK: Ten, eleven and twelve.

3 MR. HARRISON: Let me just, if I may --

4 THE COURT: Go ahead.

5 MR. HARRISON: (Continuing) So that we are
6 clear and I am clear, one, three -- one and three
7 are acceptable to the dedefendant. I challenge
8 five, six and seven. Eight was acceptable to the
9 defense. I challenge -- nine was acceptable.
10 Didn't challenge him. I don't remember ten.
11 Eleven and twelve I am challenging. And, again,
12 with reasons if necessary.

13 THE CLERK: That makes juror number one,
14 Phyllis Kessler. Juror number two, Anne Curatolo.
15 Juror number three is Patrick Monaghan. Juror
16 number four is Cybil Hammil.

17 MR. VECCHIONE: Judge, before we go on, before
18 we go on --

19 THE COURT: You want reasons? You want
20 neutral reasons?

21 MR. VECCHIONE: I would love them, every one
22 of them, with the exception of Mr. Morrero is a
23 male and -- he is male but white. Judge, the point
24 is --

25 THE COURT: He is white.

1 Jury Selection

2 MR. VECCHIONE: It's who you challenge and I
3 think --

4 THE COURT: You want neutral reasons.

5 MR. HARRISON: Let me start with number
6 thirteen. Gibaldi has a cousin -- number twelve,
7 he had a cousin who is a police officer. When I
8 was talking to him, the more I spoke, the more his
9 arms folded in front of me showing body language.
10 It was indicative that he did not like me nor my
11 client. That's my reason. Number eleven,
12 Glaubach, and I did put on, I believe, two
13 Caucasian women anyway.

14 THE COURT: Forget what you put on. Each
15 juror is entitled to serve jury duty. You have to
16 tell me why.

17 MR. HARRISON: Okay. Because she had a car
18 that was fire bombed and somehow I just
19 extrapolated that we had a situation where there
20 was a major crime caused against her.

21 Number ten, I think -- ten was mugged.

22 THE COURT: Ten was a white woman.

23 MR. HARRISON: Ten was a white woman.

24 THE CLERK: Edward Collins.

25 MR. VECCHIONE: White male.

1 Jury Selection

2 THE COURT: White male. What about him?

3 MR. HARRISON: And he basically works for
4 homes protection and he mentioned he was robbed
5 and/or mugged and the defense position is it's too
6 close to the crime.

7 THE COURT: Those are your reasons?

8 MR. HARRISON: Those are my reasons.

9 MR. VECCHIONE: Cane?

10 MR. HARRISON: Cane I just -- I did not feel a
11 positive flow with him; that's number seven, and
12 would simply argue that I put on the floor --

13 THE COURT: Don't tell us who you put on. Give
14 us the reason for number seven.

15 MR. HARRISON: I did not have a good feeling
16 with him. I can't give a specific reason.

17 THE COURT: You are supposed to give a neutral
18 reason.

19 MR. HARRISON: My reason why I did not feel
20 chemistry with him, I saw his arms crossed and it's
21 the defense position when arms are crossed based on
22 a charge like this, extrapolating from body
23 language, he is moving -- that's moving against me.

24 MR. VECCHIONE: Five and six he challenged as
25 well.

1 Jury Selection

2 THE COURT: But I am saying --

3 MR. HARRISON: Six, I am sorry. On number six
4 he said he was held up.

5 THE COURT: So?

6 MR. POSNER: In the store he was working with.

7 MR. HARRISON: He is --

8 THE COURT: He wasn't personally held up, his
9 store was.

10 MR. HARRISON: I extrapolated from the store.
11 We have a hold-up scenario.

12 THE COURT: It was a gunpoint hold-up.

13 MR. HARRISON: And I remembered that number
14 five was a crime victim. I don't -- if I am wrong,
15 correct me.

16 MR. VECCHIONE: You are wrong.

17 THE COURT: He was not a crime victim. He was
18 the only one who was not a --

19 MR. HARRISON: May I stick my face out there?

20 THE COURT: Sure. He is the Hispanic man.

21 MR. HARRISON: I will withdraw my challenge to
22 five. I believe I believed he was a crime victim.
23 In good faith I would assume that not to be true.

24 THE COURT: He is the only one in the first
25 row that was not a crime victim in the front row.

1 Jury Selection

2 THE CLERK: David Morrero.

3 MR. HARRISON: I withdraw it.

4 THE COURT: The defendant has exercised five.

5 MR. VECCHIONE: Just to make it clear for the
6 record, Mr. Harrison is withdrawing after having
7 gone back into the courtroom, not because the Court
8 has seated him over objection, but because
9 Mr. Harrison went back into the courtroom.

10 THE COURT: Yes.

11 THE CLERK: Mr. Morrero will now be juror
12 number three. Okay.

13 THE COURT: Five and two.

14 THE CLERK: As to Delta McCalla, peremptorily,
15 People?

16 MR. VECCHIONE: Yes, challenged.

17 THE COURT: Five by the defense and three by
18 the People.

19 THE CLERK: Correct.

20 (Back in the courtroom.)

21 THE CLERK: The following jurors whose names I
22 call, kindly step out of the jury box. Delta
23 McCalla, Edward Collins, Evelyn Glaubach, Robert
24 Gibaldi, John Cane, Joseph Andimo, Luz Williams,
25 return to Central Jury. Marlene Gooding and

1 Jury Selection

2 Berlent Thompson.

3 THE COURT: Are the remaining jurors
4 satisfactory, Mr. Harrison?

5 MR. HARRISON: Acceptable to the defense, Your
6 Honor.

7 MR. VECCHIONE: Yes, acceptable, Your Honor.

8 THE CLERK: Jurors, kindly stand and raise
9 your right hand.

10 Do you and each of you solemnly swear or
11 affirm that you will try this action in a just and
12 impartial manner and to the best of your judgment
13 render a verdict in accordance with the law and the
14 evidence, so help you God?

15 (Jurors respond in the affirmative.)

16 THE COURT: All right. Can all of you in the
17 front row, can you slide over as far as you can so
18 these jurors can sit there?

19 THE CLERK: Jurors -- shall I fill the box?

20 THE COURT: Yes.

21 THE CLERK: Jurors, once again, if you hear
22 your name called, kindly answer "here" to the call
23 of your name. Take your belongings and take the
24 seat that's assigned.

25 Take seat number one, Umberto Bartolomeo.

1 Jury Selection

2 THE COURT: If any of you can't be fair and
3 impartial jurors, come right up here and tell
4 me.

5 THE CLERK: Take seat number two, Michael
6 Grieco.

7 Just step down and step around, sir.

8 (Whereupon, there was a discussion at the
9 bench between all counsel, prospective juror and
10 the Court.)

11 THE COURT: Report back to Central Jury.

12 THE CLERK: Take seat number two, Maureen
13 Morris.

14 Take seat number three, Elizabeth Knafo.

15 Take seat number four, Ronald Young.

16 Take seat number five, Rachel Axelrod.

17 Take seat number six, Arthur Warshowsky.

18 In the second row, seat number seven, Remo
19 Narduzzi.

20 THE COURT: Can you folks slide over, please,
21 just so that our five jurors can sit on the end
22 please?

23 THE CLERK: Take seat number eight, Laney
24 Nelson.

25 (Whereupon, a discussion was had off the

1 Jury Selection

2 record at the bench between all counsel, the
3 prospective juror and the Court.)

4 THE COURT: Report back to Central Jury,
5 ma'am.

6 THE COURT OFFICER: This gentleman, number
7 seven, would like to approach.

8 THE COURT: Why did you take the seat?

9 (Whereupon, a discussion was had off the
10 record at the bench between all counsel, the
11 prospective juror and the Court.)

12 THE COURT: Excused.

13 By the way, you come to the point up here, I
14 am not going to fight with you if you tell me you
15 don't understand English because I will be making a
16 mistake. If you are telling me the truth, that's
17 one thing. If you are not telling me the truth,
18 you are still going to be sitting downstairs and
19 counting cars going over the Brooklyn Bridge.

20 Stay downstairs and make sure you tell me at
21 the end of the day how many cars went over the
22 bridge.

23 THE CLERK: Take seat number seven in the
24 second row, Helen Williams.

25 THE COURT: Can you be a fair juror, Miss